IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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JUDGMENT

Bhagwan Das.
vs.
Gopikishan and another.

S.B.CIVIL SECOND APPEAL NO.293/2006 UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 13.12.2005 PASSED BY SHRI S.K. PAREEK, DISTRICT JUDGE, PALI IN CIVIL APPEAL NO.35/2005.

DATE OF JUDGMENT ::: 13.2.2007

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. DN Yadav, for the appellant.
Mr. NM Lodha, for the respondents.

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BY THE COURT:

Heard learned counsel for the parties.

The trial court dismissed the suit of the plaintiffs/ respondents vide judgment and decree dated

23.2.2005 which was reversed by the first appellate court and the suit for eviction was decreed on various grounds vide judgment and decreed dated 13.12.2005. Hence, this second appeal.

Learned counsel for the appellant read over the statements of the plaintiffs to show that the plaintiffs failed to prove their personal bonafide necessity. Learned counsel for the appellant also tried to assert that the appellate court has wrongly discarded the evidence of the defendant-tenant.

After going through all the facts of the case and the reasons given by the first appellate court, this Court is of the view that the finding of fact has been recorded by the first appellate court after appreciation of evidence.

Learned counsel for the appellant also submitted that the plaintiffs filed a petition for revision of rent immediately after dismissal of suit by the trial court, therefore, that shows lack of bonafides of the plaintiffs. It is also submitted that the Rent Tribunal enhanced the rent, therefore, the present appellant filed writ petition no.2585/2006 before this Court in which notices have been issued. In view of the above, according to learned counsel for the appellant, two

proceedings were not maintainable and the plaintiff's suit for eviction of the tenant is liable to be dismissed.

The contention raised by the learned counsel for the appellant on the plea that subsequently the landlord filed petition for enhancement of rent before Rent Tribunal, hence, the present suit deserves to be rejected, is liable to be rejected summarily, hence, rejected.

In view of the above discussion, I do not find that any substantial question of law is involved in this appeal. Accordingly, this appeal deserves to be dismissed.

At this stage, learned counsel for the appellant prayed that sufficient time may be granted to vacate the suit premises because the appellant is in occupation since 1980.

Looking to the totality of the facts, this Court deems that the appellant be granted some time to vacate the suit shop.

Therefore, it is ordered that in case, the appellant furnishes a written undertaking before the trial court within a period of two months from today

that he shall hand over the vacant possession to the landlords by or before 28.2.2008 and shall not part with the possession or sublet the suit premises during this period and shall pay all the arrears of rent and decreetal amount, if due, within a period of two months from today before the trial court or directly to the landlords, the decree under challenge shall not be executed till 1.3.2008. The appellant shall also deposit the rent month by month by 15th day of each succeeding month of his tenancy in the trial court.

In case of non-compliance of the order or default in payment of rent mentioned above, the decree shall become executable forthwith.

With the aforesaid concession, this appeal is dismissed.

(PRAKASH TATIA), J.

S.Phophaliya